

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 904
93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRIESHEIMER.

Offered April 10, 2006.

Senate Substitute adopted, April 11, 2006.

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TERRY L. SPIELER, Secretary.

4252S.04P

AN ACT

To repeal sections 8.007, 8.010, 8.110, 8.115, 8.120, 8.178, 8.180, 8.200, 8.250, 8.260, 8.310, 8.315, 8.316, 8.320, 8.325, 8.330, 8.340, 8.350, 8.360, 8.420, 8.800, 8.803, 8.805, 8.807, 8.812, 8.815, 8.817, 8.823, 8.830, 8.833, 8.835, 8.837, 8.843, 8.847, 8.849, 8.851, 34.030, 37.005, 107.170, and 610.021, RSMo, and to enact in lieu thereof forty-three new sections relating to designing, building, and managing state buildings, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 8.007, 8.010, 8.110, 8.115, 8.120, 8.178, 8.180, 8.200, 8.250, 8.260, 8.310, 8.315, 8.316, 8.320, 8.325, 8.330, 8.340, 8.350, 8.360, 8.420, 8.800, 8.803, 8.805, 8.807, 8.812, 8.815, 8.817, 8.823, 8.830, 8.833, 8.835, 8.837, 8.843, 8.847, 8.849, 8.851, 34.030, 37.005, 107.170, and 610.021, RSMo, are repealed and forty-three new sections enacted in lieu thereof, to be known as sections 8.007, 8.010, 8.110, 8.115, 8.178, 8.180, 8.200, 8.250, 8.257, 8.259, 8.260, 8.295, 8.298, 8.310, 8.315, 8.316, 8.320, 8.325, 8.330, 8.340, 8.350, 8.360, 8.420, 8.800, 8.805, 8.807, 8.812, 8.1000, 8.1003, 8.1006, 8.1007, 8.1009, 8.1012, 8.1015, 8.1018, 8.1021, 8.1024, 8.1025, 34.030, 34.077, 37.005, 107.170, and 610.021, to read as follows:

8.007. 1. The commission shall:

(1) Exercise general supervision of the administration of sections 8.001 to

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

3 8.007;

4 (2) Evaluate and recommend courses of action on the restoration and
5 preservation of the capitol, the preservation of historical significance of the
6 capitol and the history of the capitol;

7 (3) Evaluate and recommend courses of action to ensure accessibility to
8 the capitol for physically disabled persons;

9 (4) Advise, consult, and cooperate with the office of administration, the
10 archives division of the office of the secretary of state, the historic preservation
11 program within the department of natural resources, the division of tourism
12 within the department of economic development and the historical society of
13 Missouri in furtherance of the purposes of sections 8.001 to 8.007;

14 (5) Be authorized to cooperate or collaborate with other state agencies and
15 not-for-profit organizations to publish books and manuals concerning the history
16 of the capitol, its improvement or restoration;

17 (6) Before each September first, recommend options to the governor on
18 budget allocation for improvements or restoration of the capitol premises;

19 (7) Encourage, participate in, or conduct studies, investigations, and
20 research and demonstrations relating to improvement and restoration of the state
21 capitol it may deem advisable and necessary for the discharge of its duties
22 pursuant to sections 8.001 to 8.007; [and]

23 (8) Hold hearings, issue notices of hearings and take testimony as the
24 commission deems necessary; and

25 **(9) Assume the responsibilities of the capitol review commission**
26 **and develop written policy that establishes guidelines for selection and**
27 **placement of plaques, monuments, statues, pictures, and other articles**
28 **in or on all buildings and grounds under the control of the board of**
29 **public buildings and make a determination after a review of all**
30 **requests from entreating parties as to the installation of such articles.**

31 2. The "Second Capitol Commission Fund" is hereby created in the state
32 treasury. Any moneys received from sources other than appropriation by the
33 general assembly, including from private sources, gifts, donations and grants,
34 shall be credited to the second capitol commission fund and shall be appropriated
35 by the general assembly.

36 3. The provisions of section 33.080, RSMo, to the contrary
37 notwithstanding, moneys in the second capitol commission fund shall not be
38 transferred and placed to the credit of the general revenue fund.

39 4. The commission is authorized to accept all gifts, bequests and donations
40 from any source whatsoever. The commission may also apply for and receive
41 grants consistent with the purposes of sections 8.001 to 8.007. All such gifts,
42 bequests, donations and grants shall be used or expended upon appropriation in
43 accordance with their terms or stipulations, and the gifts, bequests, donations or
44 grants may be used or expended for the preservation, restoration and improved
45 accessibility and for promoting the historical significance of the capitol.

 8.010. 1. The governor, attorney general and lieutenant governor
2 constitute the board of public buildings. The governor is chairman and the
3 lieutenant governor, secretary. The speaker of the house of representatives and
4 the president pro tempore of the senate shall serve as ex officio members of the
5 board but shall not have the power to vote. The board shall constitute a body
6 corporate and politic. The board has general supervision and charge of [the] all
7 public property of the state [at the seat of government] **except for that dedeed**
8 **to the department of higher education, the conservation commission,**
9 **and the highways and transportation commission,** and other duties
10 imposed on it by law.

11 2. The commissioner of administration shall provide staff support to the
12 board.

 8.110. There is hereby created within the office of administration a
2 "Division of Facilities Management, **Design, and Construction**", which shall
3 **supervise the design, construction, renovations, and repair of state**
4 **facilities, except as provided in sections 8.015 and 8.017, and except**
5 **facilities belonging to the institutions of higher education, the**
6 **highways and transportation commission, and the conservation**
7 **commission, and which shall be responsible to review all requests for**
8 **appropriations for capital improvements.** Except as otherwise provided by
9 law, the director of the division [of facilities management] shall be responsible
10 for the management and operation of office buildings titled in the name of the
11 governor. The director shall exercise all diligence to ensure that all facilities
12 within his management and control comply with the designated building codes;
13 that they are clean, safe and secure, and in proper repair; and that they are
14 adequately served by all necessary utilities.

 8.115. Notwithstanding the provisions of chapter 571, RSMo, the office of
2 administration, division of facilities management, **design, and construction** is
3 authorized to provide armed security guards at state-owned or leased facilities

4 except at the seat of government and within the county which contains the seat
5 of government, either through qualified persons employed by the office of
6 administration, or through the use of a contract with a properly licensed firm.

8.178. Any person who violates [sections 8.172 to 8.174, or section 8.177,]
2 **section 8.172** or any of the traffic or parking regulations of the commissioner
3 shall be punished as follows: Fines for traffic violations shall not, except as
4 provided by section 301.143, RSMo, exceed [five] **ten** dollars for overparking,
5 fifteen dollars for double parking, and fifty dollars for speeding[, and]. **The fine**
6 **for a second or subsequent overparking offense on the same day will**
7 **increase to twenty dollars.** The circuit court of Cole County has authority to
8 enforce this law.

8.180. In all cases where a court or other officer performs any lawful
2 service, at the instance of any director of the division of **facilities management**,
3 design, and construction in and about the collection of debts due the state, and
4 the costs have not nor cannot be made out of the defendant, the director of the
5 division of **facilities management**, design, and construction shall pay the same
6 fees that other plaintiffs are bound to pay for similar services, and no other.

8.200. The director of the division of **facilities management**, design,
2 and construction shall proceed against any sheriff or peace officer who refuses to
3 perform any duty, in the name of the state, in the same way and to the full extent
4 that any other plaintiff in an action might or could do.

8.250. 1. ["Project"] For the purposes of this [chapter means] **section**,
2 **the following terms mean:**

3 (1) "Debarment", the disqualification of a contractor for a period
4 of two years and until reinstated under rules established by the
5 director to receive invitations for bids or requests for proposals or the
6 award of any contract by the state and shall be applicable to selection
7 of consultants by the state and entry into a contract as a joint venture,
8 contractor, subcontractor, consultant, or subconsultant on state
9 projects;

10 (2) "Director", the director of the division of facilities
11 management, design, and construction;

12 (3) "Project", the labor, as covered under subdivision (5) of section
13 **290.210, RSMo**, or material necessary for the construction, renovation, or repair
14 of improvements to real property so that the work, when complete, shall be ready
15 for service for its intended purpose and shall require no other work to be a

16 completed system or component.

17 2. All contracts for projects[, the cost of which exceeds twenty-five]
18 **costing more than one hundred** thousand dollars[,] **that are** entered into by
19 any officer or agency of this state or of any city containing five hundred thousand
20 inhabitants or more shall be let to the lowest, responsive, responsible bidder or
21 bidders after notice and publication of an advertisement for five days in a daily
22 newspaper in the county where the work is located, or at least twice over a period
23 of ten days or more in a newspaper in the county where the work is located, and
24 in [two] **one** daily [newspapers] **newspaper** in the state which [do] **does** not
25 have less than fifty thousand daily circulation, and by such other means as are
26 determined to be most likely to reach potential bidders.

27 3. The number of such public bids shall not be restricted or curtailed, but
28 shall be open to all persons complying with the terms upon which the bids are
29 requested or solicited unless [debarred for cause] **the state has imposed**
30 **debarment on the potential bidder as provider in subsection 5 of this**
31 **section.** No contract shall be awarded when the amount appropriated for same
32 is not sufficient to complete the work ready for service.

33 4. Dividing a project into component labor or material allocations for the
34 purpose of avoiding bidding or advertising provisions required by this section is
35 specifically prohibited.

36 **5. If the director believes that cause exists to suspend or debar**
37 **a contractor, the director shall notify the contractor in writing of such**
38 **basis or cause. The decision of the director regarding the debarment**
39 **is not a "contested case" as it is defined in subdivision (2) of section**
40 **536.010, RSMo. The division director shall impose debarment on a**
41 **company or firm and its named principals for any or a combination of**
42 **the following reasons:**

43 **(1) Commission of a fraud or criminal offense related to**
44 **obtaining or performing a government contract;**

45 **(2) Violation of antitrust statutes;**

46 **(3) Commission of embezzlement, theft, forgery, making false**
47 **statements, or tax evasion;**

48 **(4) Commission of any other offense indicating a lack of business**
49 **integrity or business honesty that seriously and directly affects the**
50 **present responsibility of the contractor;**

51 **(5) Debarment of the contractor by another state, the federal**

52 government, another entity of the state of Missouri, or by a political
53 subdivision of the state of Missouri; or

54 (6) Violations of material contract provisions, which include but
55 are not limited to failure to perform or negligent performance of any
56 term or standard of one or more contracts. The failure to perform
57 caused by acts beyond the control of the contractor shall not be
58 considered to be a basis for debarment.

8.257. 1. The division of facilities management, design, and
2 construction may require prequalification of bidders when the
3 construction project to be bid:

4 (1) Is highly specialized as to the work to be performed;

5 (2) Requires significant experience in the method of construction
6 specified;

7 (3) Requires specialized equipment and experience with such
8 equipment;

9 (4) Requires specific expertise in the installation of sophisticated
10 equipment, systems, or controls;

11 (5) Requires a minimum level of training or certification from
12 specified equipment manufacturers;

13 (6) Shall be completed within a critical time frame. "Critical
14 time frame" is considered the length of time it would take to complete
15 a project using the most qualified bidder. A determination of critical
16 time frame shall be made by the director in writing; or

17 (7) Requires higher than "industry standard" quality control.

18 2. The director shall select those projects for which
19 prequalification of bidders is appropriate.

20 3. The pre-qualification process shall be a one-step process. The
21 division shall prepare a request for qualifications for specific selected
22 projects. Notice of the request for qualifications shall be advertised in
23 accordance with section 8.250. The division shall publish a notice of
24 the request for qualifications with a description of the project, the
25 rationale for the decision to prequalify bidders, the procedures for
26 submittal, and the selection criteria to be used, which may include:

27 (1) Experience of the bidder with similar projects;

28 (2) Experience of key personnel proposed for project;

29 (3) List of recent projects of similar scope and value;

30 (4) Bonding capacity;

31 **(5) List of specified equipment available to bidder;**
32 **(6) References;**
33 **(7) Safety records;**
34 **(8) Previous project completion schedules;**
35 **(9) Previous project contract change rates; and**
36 **(10) Qualifications of subcontractors proposed for specified areas**
37 **of work.**

38 **4. An evaluation team shall be selected by the director to**
39 **evaluate the qualifications submitted by all potential bidders. The**
40 **team shall consist of at least three representatives of the division.**

41 **(1) The evaluation team shall review the submittals of the**
42 **potential bidders and assign points to each submittal in accordance**
43 **with the criteria established for the project and as set out in the**
44 **instructions of the request for qualifications;**

45 **(2) In assigning points to each submittal, an additional five**
46 **points on a one-hundred point scale or its proportional equivalent shall**
47 **be awarded to each bidder who spends up to eight percent of the total**
48 **wages the bidder pays on behalf of its employees for their health**
49 **insurance costs. For purposes of this subdivision, health insurance**
50 **costs shall mean: the amount paid by an employer to provide health**
51 **care or health insurance to employees in this state to the extent such**
52 **costs may be deductible by an employer under federal tax laws and**
53 **shall include payments for medical care, prescription drugs, vision**
54 **care, medical savings accounts, and any other costs to provide health**
55 **benefits;**

56 **(3) All potential bidders obtaining a predetermined number of**
57 **points shall be prequalified to submit a bid on the project on the date**
58 **specified;**

59 **(4) Only bids from prequalified bidders will be accepted and**
60 **opened. Bid evaluation shall be on the basis of the lowest, responsive,**
61 **responsible bidder.**

8.259. 1. The director of the division of facilities management,
2 **design, and construction may waive the requirement of competitive**
3 **bids for construction projects when the director has determined that**
4 **there exists a threat to life, property, public health, or public safety or**
5 **when immediate projects are necessary for repairs to state property in**
6 **order to protect against further loss of or damage to state property, to**

7 **prevent or minimize serious disruption in state services, or to ensure**
8 **the integrity of state records. Emergency contracts for construction**
9 **shall be made with as much competition as is practicable under the**
10 **circumstances.**

11 **2. When the director determines that a threat exists, the director**
12 **shall file a written explanation of his or her determination with the**
13 **appropriations committee chair of the senate and the budget chair of**
14 **the house of representatives within six days of his or her**
15 **determination.**

8.260. All appropriations made by the general assembly amounting to one
2 hundred thousand dollars or more for the construction, renovation, or repair of
3 facilities shall be expended in the following manner:

4 (1) The agency requesting payment shall provide the commissioner of
5 administration with satisfactory evidence that a bona fide contract, procured in
6 accordance with all applicable procedures, exists for the work for which payment
7 is requested;

8 (2) All requests for payment shall be approved by the architect or engineer
9 registered to practice in the state of Missouri who designed the project or who has
10 been assigned to oversee it;

11 (3) In order to guarantee completion of the contract, the agency or officer
12 shall retain a portion of the contract value in accordance with the provisions of
13 section 34.057, RSMo;

14 (4) A contractor may be paid for materials delivered to the site or to a
15 storage facility approved by the director of the division of **facilities**
16 **management**, design, and construction as having adequate safeguards against
17 loss, theft or conversion.

18 In no case shall the amount contracted for exceed the amount appropriated by the
19 general assembly for the purpose.

8.295. The commissioner of administration shall negotiate all
2 leases and purchase all lands, except for such departments as derive
3 their power to acquire lands from the constitution of the state.

8.298. 1. Every employer doing business with the state under this
2 chapter shall require each newly hired or rehired independent
3 contractor to fill out a federal W-9 form. The forms shall be compiled,
4 distributed, and entered into the state directory of new hires in the
5 same fashion as set forth in subsection 1 of section 285.300, RSMo.

6 2. An employer shall not, in an attempt to avoid tax liability or
7 reporting requirements for any employee, denote or treat such
8 employee as an independent contractor, contract labor, or any other
9 term or category implying the absence of an employment relationship.

10 3. Any employer who misclassifies an employee as an
11 independent contractor or otherwise misclassifies the employee's
12 employment status shall be fined an amount equal to the tax due on the
13 employee's taxable wages or an amount equal to three times the tax due
14 on the employee's taxable wages if it is shown that the employer's
15 failure to report wages is due to bad faith.

16 4. An employer shall not terminate or in any manner
17 discriminate against an employee because the employee has
18 communicated to the employer the intent to seek reclassification as an
19 employee instead of an independent contractor or has communicated
20 the intent to file an action alleging a violation of this section.

8.310. Any other provision of law to the contrary notwithstanding, no
2 contracts shall be let for design, repair, renovation or construction without
3 approval of the director of the division of **facilities management**, design, and
4 construction, and no claim for design, repair, construction or renovation projects
5 under contract shall be accepted for payment by the commissioner of
6 administration without approval by the director of the division of **facilities**
7 **management**, design, and construction; except that the department of
8 conservation, the boards of curators of the state university and Lincoln
9 University, the several boards of regents of the state colleges and the boards of
10 trustees of the community junior colleges may contract for architectural and
11 engineering services for the design and supervision of the construction, repair,
12 maintenance or improvement of buildings or institutions and may contract for
13 construction, repair, maintenance or improvement. The director of the division
14 of **facilities management**, design, and construction shall not be required to
15 review any claim for payment under any such contract not originally approved by
16 him. No claim under any contract executed by the department of conservation or
17 an institution of higher learning, as provided above, shall be certified by the
18 commissioner of administration unless the entity making the claim shall certify
19 in writing that the payment sought is in accordance with the contract executed
20 by the entity and that the underlying construction, repair, maintenance or
21 improvement conforms with applicable regulations promulgated by the director

22 pursuant to section 8.320.

8.315. The director of **facilities management**, design, and construction
2 shall provide technical assistance to the director of the budget with regard to
3 requests for capital improvement appropriations. The director shall review all
4 capital improvement requests, including those made by the institutions of higher
5 learning, the department of conservation or the highway commission, and shall
6 recommend to the director of the budget and the governor those proposals which
7 should be funded.

8.316. The division of **facilities management**, design, and construction
2 shall promulgate a method to accurately calculate the replacement cost of all
3 buildings owned by public institutions of higher education. The method shall be
4 developed in cooperation with such institutions and shall include the necessary
5 components and factors to accurately calculate a replacement cost. The division
6 shall utilize a procedure to allow differences to be resolved and may include an
7 alternative calculation where the original cost plus an inflation factor is utilized
8 to determine a replacement cost value.

8.320. The director of the division of **facilities management**, design,
2 and construction shall set forth reasonable conditions to be met and procedures
3 to be followed in the repair, maintenance, operation, construction and
4 administration of state facilities. The conditions and procedures shall be codified
5 and filed with the secretary of state in accordance with the provisions of the
6 constitution. No payment shall be made on claims resulting from work performed
7 in violation of these conditions and procedures, as certified by the director of the
8 division of **facilities management**, design, and construction.

8.325. 1. In addition to providing the general assembly with estimates of
2 the cost of completing a proposed capital improvement project, the division of
3 **facilities management**, design, and construction shall provide the general
4 assembly, at the same time as the division submits the estimate of the capital
5 improvement costs for the proposed capital improvement project, an estimate of
6 the operating costs of such completed capital improvement project for its first full
7 year of operation. Such estimate shall include, but not be limited to, an estimate
8 of the cost of:

9 (1) Personnel directly related to the operation of the completed capital
10 improvement project, such as janitors, security, and other persons who would
11 provide necessary services for the completed project or facility;

12 (2) Utilities for the completed project or facility; and

13 (3) Any maintenance contracts which would be entered into in order to
14 provide services for the completed project or facility, such as elevator
15 maintenance, boiler maintenance, and other similar service contracts with private
16 contractors to provide maintenance services for the completed project or facility.

17 2. The costs estimates required by this section shall clearly indicate the
18 additional operating costs of the building or facility due to the completion of the
19 capital improvement project where such proposed project is for an addition to an
20 existing building or facility.

21 3. Any agency of state government which removes from rental quarters
22 or state-owned buildings because of defective conditions or any other state
23 personnel shall be prevented from reoccupation of those quarters for a period of
24 three years unless such defective conditions are renovated within a reasonable
25 time before reoccupation.

 8.330. The director of the division of **facilities management**, design,
2 and construction may secure information and data relating to state facilities from
3 all departments and agencies of the state and each department and agency shall
4 furnish information and data when requested by the director of the division of
5 **facilities management**, design, and construction. All information and data
6 collected by the director of the division of **facilities management**, design, and
7 construction is available at all times to the general assembly upon request.

 8.340. The director of the division of **facilities management**, design,
2 and construction shall assemble and maintain complete files of information on the
3 repair, utilization, cost and other data for all state facilities, including power
4 plants, pump houses and similar facilities. He shall also assemble and maintain
5 files containing a full legal description of all real estate owned by the state and
6 blueprints of all state facilities.

 8.350. The director of the division of **facilities management**, design,
2 and construction shall deliver to his successor all property and papers of every
3 kind in his possession, relative to the affairs of state, make an inventory thereof,
4 upon which he shall take a receipt of his successor, and deliver the same to the
5 secretary of state.

 8.360. The director of the division of **facilities management**, design,
2 and construction shall inspect all facilities and report to the general assembly at
3 the commencement of each regular session on their condition, maintenance, repair
4 and utilization.

 8.420. 1. Bonds issued under and pursuant to the provisions of sections

2 8.370 to 8.450 shall be of such denomination or denominations, shall bear such
3 rate or rates of interest not to exceed fifteen percent per annum, and shall mature
4 at such time or times within forty years from the date thereof, as the board
5 determines. The bonds may be either serial bonds or term bonds.

6 2. Serial bonds may be issued with or without the reservation of the right
7 to call them for payment and redemption in advance of their maturity, upon the
8 giving of such notice, and with or without a covenant requiring the payment of
9 a premium in the event of such payment and redemption prior to maturity, as the
10 board determines.

11 3. Term bonds shall contain a reservation of the right to call them for
12 payment and redemption prior to maturity at such time or times and upon the
13 giving of such notice, and upon the payment of such premium, if any, as the board
14 determines.

15 4. The bonds, when issued, shall be sold at public sale for the best price
16 obtainable after giving such reasonable notice of such sale as may be determined
17 by the board, but in no event shall such bonds be sold for less than ninety-eight
18 percent of the par value thereof, and accrued interest. Any such bonds may be
19 sold to the United States of America or to any agency or instrumentality thereof,
20 at a price not less than par and accrued interest, without public sale and without
21 the giving of notice as herein provided.

22 5. The bonds, when issued and sold, shall be negotiable instruments
23 within the meaning of the law merchant and the negotiable instruments law, and
24 the interest thereon shall be exempt from income taxes under the laws of the
25 state of Missouri.

26 6. [After August 13, 1976,] The board shall not issue revenue bonds
27 pursuant to the provisions of sections 8.370 to 8.450 for one or more projects, as
28 defined in section 8.370, in excess of a total par value of [six hundred fifty-five]
29 **seven hundred seventy-five** million dollars.

30 7. [After August 13, 1976,] Any bonds which may be issued pursuant to
31 the provisions of sections 8.370 to 8.450 shall be issued only for projects which
32 have been approved by a majority of the house members and a majority of the
33 senate members of the committee on legislative research of the general assembly,
34 and the approval by the committee on legislative research required by the
35 provisions of section 8.380 shall be given only in accordance with this
36 provision. For the purposes of approval of a project, the total amount of bonds
37 issued for purposes of energy retrofitting in state-owned facilities shall be treated

38 as a single project.

39 [8. No more than one hundred fifty million dollars of the net proceeds of
40 the bonds authorized pursuant to sections 8.370 to 8.450 or sections 8.660 to
41 8.670 may be applied to general revenue in fiscal year 2003.]

8.800. As used in sections 8.800 to 8.825, the following terms mean:

2 (1) "Builder", the prime contractor that hires and coordinates building
3 subcontractors or if there is no prime contractor, the contractor that completes
4 more than fifty percent of the total construction work performed on the
5 building. Construction work includes, but is not limited to, foundation, framing,
6 wiring, plumbing and finishing work;

7 (2) "Department", the department of natural resources;

8 (3) "Designer", the architect, engineer, landscape architect, builder,
9 interior designer or other person who performs the actual design work or is under
10 the direct supervision and responsibility of the person who performs the actual
11 design work;

12 (4) "District heating and cooling systems", heat pump systems which use
13 waste heat from factories, sewage treatment plants, municipal solid waste
14 incineration, lighting and other heat sources in office buildings or which use
15 ambient thermal energy from sources including temperature differences in rivers
16 to provide regional heating or cooling;

17 (5) "Division", the division of **facilities management**, design, and
18 construction;

19 (6) "Energy efficiency", the increased productivity or effectiveness of
20 energy resources use, the reduction of energy consumption, or the use of
21 renewable energy sources;

22 (7) "Gray water", all domestic wastewater from a state building except
23 wastewater from urinals, toilets, laboratory sinks, and garbage disposals;

24 (8) "Life cycle costs", the costs associated with the initial construction or
25 renovation and the proposed energy consumption, operation and maintenance
26 costs over the useful life of a state building or over the first twenty-five years
27 after the construction or renovation is completed;

28 (9) "Public building", a building owned or operated by a governmental
29 subdivision of the state, including, but not limited to, a city, county or school
30 district;

31 (10) "Renewable energy source", a source of thermal, mechanical or
32 electrical energy produced from solar, wind, low-head hydropower, biomass,

33 hydrogen or geothermal sources, but not from the incineration of hazardous
34 waste, municipal solid waste or sludge from sewage treatment facilities;

35 (11) "State agency", a department, commission, authority, office, college
36 or university of this state;

37 (12) "State building", a building owned [by this state or an agency of this
38 state] **or operated by the state or a state agency or department.**

8.805. 1. For the first three years of each completed energy efficiency
2 project for state buildings, to the extent that there are energy savings beyond
3 payment of the financing obligation, required reserves and other expenses
4 associated with project financing, one-half of the energy savings shall be placed
5 in the energy [analyses] **savings** account, created in section 8.807, and one-half
6 shall revert to the general revenue fund. The division, in conjunction with the
7 department, shall establish criteria for determining projected savings from energy
8 efficiency projects in state buildings. The division, in conjunction with all state
9 agencies, shall establish criteria for determining the actual savings which result
10 from a specific energy efficiency project.

11 2. Beginning January 15, 1997, and annually thereafter, the office of
12 administration and the department of natural resources shall file a joint report
13 to the house committee on energy and environment, the senate committee on
14 energy and environment, or their successor committees, and the governor on the
15 identification of, planning for and implementation of energy efficiency projects in
16 state buildings.

8.807. 1. The state treasurer shall establish, maintain and administer a
2 special [trust] fund to be administered by the [department] **office of**
3 **administration** and to be known as the "Energy [Analyses] **Savings** Account",
4 from which the [department] **division** shall use moneys **to make payments to**
5 **guaranteed energy cost savings contractors and** to carry out the energy
6 [analyses] **audits** of state buildings [pursuant to sections 8.815 and 8.817].

7 2. All moneys duly authorized and appropriated by the general assembly
8 **for the cost of energy for facilities with a guaranteed energy cost**
9 **savings contract sufficient to pay for such contracts**, all moneys received
10 from federal funds, gifts, bequests, donations, any other moneys so designated,
11 all moneys received pursuant to subsection 1 of section 8.805, and all interest
12 earned on and income generated from moneys in the fund shall immediately be
13 paid to and deposited in the energy [analyses] **savings** account.

14 3. The full balance, or any portion thereof, of the energy [analyses]

15 **savings** account shall be available to be used by the [department] **division** to
16 carry out the activities required in sections [8.815 and 8.817, subject to
17 appropriation] **8.235 to 8.237, subject to appropriation.**

18 4. Except as otherwise provided in sections 8.800 to 8.825, the provisions
19 of section 33.080, RSMo, requiring the transfer of unexpended funds to the
20 ordinary revenue funds of the state, shall not apply to funds in the energy
21 [analyses] **savings** account.

8.812. 1. By January 1, 1995, the department, in consultation with the
2 division [and the voluntary working group created in subsection 1 of section
3 8.815,] shall establish, by rule, a minimum energy efficiency standard for
4 construction of a state building, substantial renovation of a state building when
5 major energy systems are involved or a building which the state or state agency
6 considers for acquisition or lease. Such standard shall be at least as stringent as
7 the American Society of Heating, Refrigerating and Air Conditioning Engineers
8 (ASHRAE) Standard 90, latest revision.

9 2. All design which is initiated on or after July 1, 1995, for construction
10 of a state building or substantial renovation of a state building when major
11 energy systems are involved or any building which the state or state agency
12 considers for acquisition or lease after July 1, 1995, shall meet applicable
13 provisions of the minimum energy efficiency standard.

8.1000. As used in sections 8.1000 to 8.1025, the following terms
2 **shall mean:**

3 (1) "Construction manager-at-risk", a sole proprietorship,
4 partnership, corporation, or other legal entity that assumes the risk for
5 construction, rehabilitation, alteration, or repair of a facility at the
6 contracted price as a general contractor and provides consultation to
7 the division of facilities management, design, and construction
8 regarding construction during and after the design of the facility;

9 (2) "Design-build", a project for which the design and
10 construction services are furnished under one contract;

11 (3) "Design-build contract", a contract between the division and
12 a designer-builder to furnish the architecture or engineering and
13 related design services required for a given public construction project
14 and to furnish the labor, materials, and other construction services for
15 the same public project;

16 (4) "Design-builder", any individual, partnership, joint venture,

17 corporation, or other legal entity that furnishes the architectural or
18 engineering services and construction services, whether itself or
19 through subcontracts;

20 (5) "Design criteria consultant", a person, corporation,
21 partnership, or other legal entity duly registered and authorized to
22 practice architecture or professional engineering in this state under
23 chapter 327, RSMo, and who is employed by contract by the division to
24 provide professional design and administrative services in connection
25 with the preparation of the design criteria package;

26 (6) "Design criteria package", performance-oriented program,
27 scope, and specifications for the public construction project sufficient
28 to permit a design-builder to prepare a response to the division's
29 request for proposals for a design-build project;

30 (7) "Design services", services that are:

31 (a) Within the practice of professional engineering as defined in
32 section 327.181, RSMo, or the practice of architecture as defined in
33 section 327.091, RSMo; or

34 (b) Performed by a registered architect or professional engineer
35 in connection with the architect's or professional engineer's
36 employment or practice;

37 (8) "Director", the director of the division of facilities
38 management, design, and construction;

39 (9) "Division", the state office of administration, division of
40 facilities management, design, and construction;

41 (10) "Evaluation team", a group of people selected by the director
42 to evaluate the proposals of the design-builders. The team shall consist
43 of at least two representatives of the division of facilities management,
44 design, and construction and two representatives of the using agency.
45 A fifth member shall be selected by the director and shall serve as
46 chairman to facilitate the evaluation process and to vote only in case
47 of a tie;

48 (11) "Job order contracting (JOC)", a firm, fixed-priced,
49 competitively bid procurement process with an indefinite quantity for
50 small- to medium-sized construction and repair projects that do not
51 exceed three hundred thousand dollars;

52 (12) "Proposal", an offer to enter into a design-build contract;

53 (13) "Public construction project", the process of designing,

54 constructing, reconstructing, altering, or renovating a state-owned
55 building;

56 (14) "Request for proposals", the document by which the division
57 solicits proposals for a design-build contract;

58 (15) "Stipend", an amount paid to the unsuccessful proposers to
59 defray the cost of submission of phase II of the design-build proposal.
60 A stipend shall be five-tenths of one percent of the available funds for
61 construction, not to exceed a maximum stipend payment of fifty
62 thousand dollars.

8.1003. 1. The director shall select those projects for which the
2 use of the design-build procurement or construction manager-at-risk
3 process is appropriate. In making that determination, the director
4 shall consider:

5 (1) The likelihood of whether either method of procurement will
6 serve the public interest by providing substantial savings of time or
7 money over the traditional design-bid-build delivery process;

8 (2) The time available to complete the project and meet the
9 needs of the agency and any need to expedite the delivery process;

10 (3) The type of project and its suitability to either method;

11 (4) The size of the project;

12 (5) The level of agency knowledge and confidence about the
13 project scope and definition;

14 (6) The availability of the using agency staff to manage the
15 project; and

16 (7) The availability of the division staff to manage the project.

17 2. No more than ten percent of the projects initiated annually by
18 the division may be procured by design-build.

19 3. No more than five percent of the projects initiated annually
20 by the division may use the construction manager-at-risk process.

8.1006. The division may adopt rules and regulations under
2 chapter 536, RSMo, for the conduct of the design-build, construction
3 manager-at-risk, or JOC process. Any rule or portion of a rule, as that
4 term is defined in section 536.010, RSMo, that is created under the
5 authority delegated in this section shall become effective only if it
6 complies with and is subject to all of the provisions of chapter 536,
7 RSMo, and, if applicable, section 536.028, RSMo. This section and
8 chapter 536, RSMo, are nonseverable and if any of the powers vested

9 with the general assembly pursuant to chapter 536, RSMo, to review, to
10 delay the effective date, or to disapprove and annul a rule are
11 subsequently held unconstitutional, then the grant of rulemaking
12 authority and any rule proposed or adopted after August 28, 2006, shall
13 be invalid and void. The director shall identify all projects to be
14 conducted by design-build or construction manager-at-risk in the
15 appropriate appropriations bill. At the end of the warranty period he
16 or she shall direct an audit of each project and determine the
17 effectiveness of the alternative procurement process. Authorization to
18 conduct design-build and construction manager-at-risk projects will
19 expire July 1, 2011.

8.1007. 1. The division may use the construction manager-at-risk
2 method for a project. In using that method and in entering into a
3 contract for the services of a construction manager-at-risk, the division
4 shall follow the procedures prescribed by this section.

5 2. Before or concurrently with selecting a construction manager-
6 at-risk, the division shall select or designate an engineer or architect
7 who shall prepare the construction documents for the project and who
8 has full responsibility for complying with all state law as applicable. If
9 the engineer or architect is not a full-time employee of the division, the
10 division shall select the engineer or architect on the basis of
11 demonstrated competence and qualifications as provided by sections
12 8.285 to 8.291. The division's engineer or architect for a project may
13 not serve, alone or in combination with another, as the construction
14 manager-at-risk unless the engineer or architect is hired to serve as the
15 construction manager-at-risk under a separate or concurrent
16 procurement conducted in accordance with this chapter. This
17 subsection does not prohibit a division engineer or architect from
18 providing customary construction phase services under the engineer's
19 or architect's original professional service agreement in accordance
20 with applicable licensing laws.

21 3. The division may provide or contract for, independently of the
22 construction manager-at-risk, the inspection services, the testing of
23 construction materials engineering, and the verification testing
24 services necessary for acceptance of the facility by the division.

25 4. The division shall select the construction manager-at-risk in
26 either a one-step or two-step process. The division shall prepare:

27 (1) A request for proposals, in the case of a one-step process, or
28 a request for qualifications, in the case of a two-step process, that
29 includes general information on the project site, project scope,
30 schedule, selection criteria, and the time and place for receipt of
31 proposals or qualifications, as applicable;

32 (2) A statement as to whether the selection process is a one-step
33 or two-step process; and

34 (3) Other information that may assist the division in its selection
35 of a construction manager-at-risk.

36 The division shall state the selection criteria in the request for
37 proposals or qualifications, as applicable. The selection criteria may
38 include the offeror's experience, past performance, safety record,
39 proposed personnel, and methodology, and other appropriate factors
40 that demonstrate the capability of the construction manager-at-risk. If
41 a one-step process is used, the division may request, as part of the
42 offeror's proposal, proposed fees, and prices for fulfilling the general
43 conditions. If a two-step process is used, the division may not request
44 fees or prices in step one. In step two, the division may request that
45 five or fewer offerors, selected solely on the basis of qualifications,
46 provide additional information, including the construction manager-at-
47 risk's proposed fee and its price for fulfilling the general conditions.

48 5. The division shall publish the request for qualifications in a
49 manner prescribed by the division.

50 6. At each step, the division shall receive, publicly open, and
51 read aloud the names of the offerors. Within forty-five days after the
52 date of opening the proposals, the division or its representative shall
53 evaluate and rank each proposal submitted in relation to the criteria
54 set forth in the request for proposals.

55 7. The division or its representative shall select the offeror who
56 submits the proposal that offers the best value for the division or using
57 agency based on the published selection criteria and on its ranking
58 evaluation. The division or its representative first shall attempt to
59 negotiate a contract with the selected offeror. If the division or its
60 representative is unable to negotiate a satisfactory contract with the
61 selected offeror, the division or its representative shall, formally and
62 in writing, end negotiations with that offeror and proceed to negotiate
63 with the next offeror in the order of the selection ranking until a

64 contract is reached or negotiations with all ranked offerors end.

65 8. A construction manager-at-risk shall advertise publicly, in the
66 manner prescribed by the division, and receive bids or proposals from
67 trade contractors or subcontractors for the performance of all major
68 elements of the work other than the minor work that may be included
69 in the general conditions. A construction manager-at-risk may seek to
70 perform portions of the work personally if the construction manager-at-
71 risk submits a bid or proposal for those portions of the work in the
72 same manner as all other trade contractors or subcontractors and if the
73 division determines that the construction manager-at-risk's bid or
74 proposal provides the best value for the division or using agency.

75 9. The construction manager-at-risk and the division or its
76 representative shall review all trade contractor or subcontractor bids
77 or proposals in a manner that does not disclose the contents of the bid
78 or proposal during the selection process to a person not employed by
79 the construction manager-at-risk, engineer, architect, or division. All
80 bids or proposals shall be made public after the award of the contract
81 or within seven days after the date of final selection of bids and
82 proposals, whichever is later.

83 10. If the construction manager-at-risk reviews, evaluates, and
84 recommends to the division a bid or proposal from a trade contractor
85 or subcontractor, but the division requires another bid or proposal to
86 be accepted, the division may compensate the construction manager-at-
87 risk by a change in price, time, or guaranteed maximum cost for any
88 additional cost and risk that the construction manager-at-risk may
89 incur because of the division of facilities management, design, and
90 construction's requirement that another bid or proposal be accepted.

91 11. If a selected trade contractor or subcontractor defaults in the
92 performance of his or her work or fails to execute a subcontract after
93 being selected in accordance with this section, the construction
94 manager-at-risk may, without advertising, personally fulfill the
95 contract requirements or select a replacement trade contractor or
96 subcontractor to fulfill the contract requirements.

97 12. If a fixed contract amount or guaranteed maximum price has
98 not been determined at the time the contract is awarded, the penal
99 sums of the performance and payment bonds delivered to the division
100 shall each be in an amount equal to the project budget, as set forth in

101 the request for qualifications. The construction manager-at-risk shall
102 deliver the bonds no later than the tenth day after the date the
103 construction manager-at-risk executes the contract unless the
104 construction manager-at-risk furnishes a bid bond or other financial
105 security acceptable to the division to ensure that the construction
106 manager-at-risk will furnish the required performance and payment
107 bonds when a guaranteed maximum price is established.

8.1009. 1. If a design-build process is selected, the director shall
2 determine the scope and level of detail required to permit qualified
3 persons to submit proposals in accordance with the request for
4 proposals, given the nature of the project.

5 2. A design criteria consultant may be employed or retained by
6 the division director to assist in preparation of the request for
7 proposal, perform periodic site visits, prepare progress reports, review
8 and approve progress and final pay applications of the design-builder,
9 review shop drawings and submittals, decide disputes, interpret the
10 construction documents, perform inspections upon substantial and final
11 completion, assist in warranty inspections, and provide any other
12 professional service where the director deems it to be in the public
13 interest to have an independent design professional assisting with the
14 project administration. The consultant shall be selected and its
15 contract negotiated in compliance with sections 8.285 to 8.291.

8.1012. 1. Notice of requests for proposals shall be advertised in
2 accordance with section 8.250. The division shall publish a notice of a
3 request for proposal with a description of the project, the rationale for
4 the decision to use the design-build method of procurement, the
5 procedures for submittal, and the selection criteria to be used.

6 2. The director shall establish in the request for proposal a time,
7 place, and other specific instructions for the receipt of
8 proposals. Proposals not submitted in strict accordance with such
9 instructions shall be subject to rejection.

10 3. A request for proposals shall be prepared for each design-
11 build contract containing at a minimum the following elements:

12 (1) The procedures to be followed for submitted proposals, the
13 criteria for evaluation of proposals and their relative weight, and the
14 procedures for making awards;

15 (2) The proposed terms and conditions for the design-build

16 contract;

17 (3) The design criteria package;

18 (4) A description of the drawings, specifications, or other
19 information to be submitted with the proposal, with guidance as to the
20 form and level of completeness of the drawings, specifications, or other
21 information that will be acceptable;

22 (5) A schedule for planned commencement and completion of the
23 design-build contract;

24 (6) Budget limits for the design-build contract, if any;

25 (7) Affirmative action and minority or women's business
26 enterprise requirements for the design-build contract, if any;

27 (8) Requirements including any available ratings for
28 performance bonds, payment bonds, and insurance; and

29 (9) Any other information that the division in its discretion
30 chooses to supply, including, without limitation, surveys, soil reports,
31 drawings of existing structures, environmental studies, photographs,
32 references to public records, or affirmative action and minority
33 business enterprise requirements consistent with state and federal law.

34 4. The director shall solicit proposals in a three-phase
35 process. Phase I shall include the solicitation of qualifications of the
36 design-build team. Phase II shall include the solicitation of a technical
37 proposal including conceptual design for the project, and phase III
38 shall include the proposal of the construction cost.

39 5. The evaluation team shall review the submittals of the
40 proposers and assign points to each proposal in accordance with
41 sections 8.1000 to 8.1024 and as set out in the instructions of the
42 request for proposals.

8.1015. 1. Phase I shall require all proposers to submit a
2 statement of qualification, which shall include, but not be limited to:

3 (1) Demonstrated ability to perform projects comparable in
4 design, scope, and complexity;

5 (2) References of owners for whom design-build projects have
6 been performed;

7 (3) Qualifications of personnel who will manage the design and
8 construction aspects of the project; and

9 (4) The names and qualifications of the primary design
10 consultants and the contractors with whom the design-builder proposes

11 to subcontract. The design-builder shall not replace an identified
12 subcontractor or subconsultant without the written approval of the
13 director.

14 2. The evaluation team shall evaluate the qualifications of all
15 proposers in accordance with the instructions of the request for
16 proposal. Architectural and engineering services on the project shall
17 be evaluated on the basis of demonstrated competence and
18 qualifications in accordance with the requirements of sections 8.285
19 and 8.291. Qualified proposers selected by the evaluation team may
20 proceed to phase II of the selection. Proposers lacking the necessary
21 qualifications to perform the work shall be disqualified and shall not
22 proceed to phase II of the process. Under no circumstances shall price
23 or fee be a part of the prequalification criteria. Points assigned in the
24 phase I evaluation process shall not carry forward to phase II of the
25 process. All qualified proposers shall be ranked on points given in
26 phases II and III only.

27 3. The director shall have discretion to disqualify any proposer
28 who, in the director's opinion, lacks the minimal qualifications
29 required to perform the work.

30 4. Once a sufficient number of qualified proposers have been
31 selected, the proposers shall have a specified amount of time with
32 which to assemble phase II and phase III proposals.

8.1018. Phase II of the process shall be conducted as follows:

2 (1) The director shall invite the top five qualified proposers to
3 participate in phase II of the process. If there are not five qualified
4 proposers, all qualified proposers shall be invited to participate in
5 phase II. If at least three qualified proposers cannot be identified, the
6 contracting process shall cease;

7 (2) Proposers shall submit their design for the project at the
8 level of detail required in the request for proposal. The design
9 proposal shall demonstrate compliance with the requirements set out
10 in the request for proposal;

11 (3) The ability of the proposer to meet the schedule for
12 completing a project as specified by the owner may be considered as an
13 element of evaluation in phase II;

14 (4) Up to twenty percent of the points awarded to each proposer
15 in phase II may be based on each proposer's qualifications and ability

16 to design, contract, and deliver the project on time and within budget
17 of the office of administration;

18 (5) Under no circumstances shall the design proposal contain any
19 reference to the cost of the proposal; and

20 (6) The design proposals shall be evaluated and assigned points
21 in accordance with the requirements of the request for proposal. Phase
22 II shall account for no less than forty percent of the total points scored
23 as specified in the request for proposal.

8.1021. Phase III shall be conducted as follows:

2 (1) The phase III proposal shall provide a firm, fixed cost of
3 construction. The proposal shall be accompanied by bid security and
4 any other required submittals, such as statements of minority
5 participation as required by the request for proposal;

6 (2) Cost proposals shall be submitted in accordance with the
7 instructions of the request for proposal. The director shall reject any
8 proposal that is not submitted on time. Phase III shall account for no
9 less than forty percent of the total points scored as specified in the
10 request for proposal;

11 (3) Proposals for phase II and phase III shall be submitted
12 concurrently at the time and place specified in the request for
13 proposal. The phase III cost proposals shall be opened only after the
14 phase II design proposals have been evaluated and assigned points;

15 (4) Cost proposals shall be opened and read aloud at the time
16 and place specified in the request for proposal. At the same time and
17 place, the evaluation team shall make public its scoring of phase
18 II. Cost proposals shall be evaluated in accordance with the
19 requirements of the request for proposal. In evaluating the cost
20 proposals, the lowest bidder shall be awarded the total number of
21 points assigned to be awarded in phase III. For all other bidders, cost
22 points shall be calculated by reducing the maximum points available in
23 phase III by two percent or more for each percentage point of the
24 lowest bid by which the bidder exceeds the lowest bid, and the points
25 assigned shall be added to the points assigned for phase II for each
26 proposer;

27 (5) If the director determines that it is not in the best interest of
28 the state to proceed with the project under the proposal offered by the
29 proposer with the highest total number of points, the director may

30 reject all proposals. In such event, all qualified proposers with lower
31 point totals shall receive a stipend under section 8.1024. If the director
32 determines to award the project, the responsive proposer with the
33 highest number of points shall be awarded the contract; and

34 (6) If all proposals are rejected, the director may solicit new
35 proposals using different design criteria, budget constraints or
36 qualifications.

8.1024. As an inducement to qualified proposers, the division may
2 pay a stipend, as defined in subdivision (15) of section 8.1000, to each
3 prequalified design-builder whose proposal is responsive but not
4 accepted. Upon payment of the stipend to any unsuccessful design-
5 build proposer, the state shall acquire a nonexclusive right to use the
6 design submitted by the proposer and the proposer shall have no
7 further liability for its use by the state in any manner. The design-
8 build proposer may retain all rights and interest in the design proposed
9 and, in so doing, shall forfeit the stipend.

8.1025. 1. The division may award job order contracting (JOC)
2 for the minor construction, repair, rehabilitation, or alteration of a
3 facility if the work is of a recurring nature but the delivery times are
4 indefinite, and indefinite quantities and orders are awarded
5 substantially on the basis of predescribed and prepriced tasks.

6 2. The division may establish contractual unit prices for a JOC
7 by:

8 (1) Specifying one or more published construction unit price
9 books and the applicable divisions or line items; or

10 (2) Providing a list of work items and requiring the offerors to
11 bid or propose one or more coefficients or multipliers to be applied to
12 the price book or work items as the price proposal.

13 3. The division shall advertise for, receive, and publicly open
14 sealed proposals for JOC.

15 4. The division may require offerors to submit additional
16 information besides rates, including experience, past performance, and
17 proposed personnel and methodology.

18 5. The division may award JOC to one or more contractors in
19 connection with each solicitation of bids or proposals.

20 6. An order for a job or project under the JOC shall be signed by
21 the division's representative and the contractor. The order may be a

22 **fixed price, lump-sum contract based substantially on contractual unit**
23 **pricing applied to estimated quantities or may be a unit price order**
24 **based on the quantities and line items delivered.**

25 **7. The contractor shall provide payment and performance bonds,**
26 **if required by law, based on the amount or estimated amount of any**
27 **order.**

28 **8. The base term of a JOC may be for a period of one or two**
29 **years as set forth by the division in the request for proposals. The base**
30 **term is not renewable for more than two additional years.**

31 **9. If a JOC or an order issued under the contract requires**
32 **engineering or architectural services that constitute the practice of**
33 **engineering or the practice of architecture, such services shall be**
34 **provided in accordance with applicable law.**

34.030. The commissioner of administration shall purchase all supplies
2 for all departments of the state, except as in this chapter otherwise
3 provided. [The commissioner of administration shall negotiate all leases and
4 purchase all lands, except for such departments as derive their power to acquire
5 lands from the constitution of the state.]

34.077. 1. It is hereby declared to be the policy of the state of
2 Missouri that any employer or labor organization who employs any
3 undocumented worker shall be prohibited from entering into a contract
4 as, or performing work as, a contractor or subcontractor on a project
5 governed by a public works contract.

6 2. No employer or labor organization who employs an
7 undocumented worker, as defined by the federal Immigration Reform
8 and Control Act of 1986, shall be eligible to enter into a public works
9 contract, as defined in section 34.058, nor shall any employer or labor
10 organization who employs any undocumented worker be eligible to
11 contract as a subcontractor on a project governed by a public works
12 contract. No employer or labor organization who employs an
13 undocumented worker shall be allowed to perform work as a contractor
14 or subcontractor on a project governed by a public works contract.

15 3. Any public entity inviting bids for or letting a public works
16 contract shall insert in such entity's criteria for eligibility for the
17 award of such contract a signed, notarized statement by the applicant
18 affirming that such applicant employs no undocumented workers.

37.005. 1. Except as provided herein, the office of administration shall be

2 continued as set forth in house bill 384, seventy-sixth general assembly and shall
3 be considered as a department within the meaning used in the Omnibus State
4 Reorganization Act of 1974. The commissioner of administration shall appoint
5 directors of all major divisions within the office of administration.

6 2. The commissioner of administration shall be a member of the
7 governmental emergency fund committee as ex officio comptroller and the director
8 of the department of revenue shall be a member [in place of the chief of the
9 planning and construction division].

10 3. The office of administration is designated the "Missouri State Agency
11 for Surplus Property" as required by Public Law 152, eighty-first Congress as
12 amended, and related laws for disposal of surplus federal property. All the
13 powers, duties and functions vested by sections 37.075 and 37.080, and others,
14 are transferred by type I transfer to the office of administration as well as all
15 property and personnel related to the duties. The commissioner shall integrate
16 the program of disposal of federal surplus property with the processes of disposal
17 of state surplus property to provide economical and improved service to state and
18 local agencies of government. The governor shall fix the amount of bond required
19 by section 37.080. All employees transferred shall be covered by the provisions
20 of chapter 36, RSMo, and the Omnibus State Reorganization Act of 1974.

21 4. The commissioner of administration shall replace the director of
22 revenue as a member of the board of fund commissioners and assume all duties
23 and responsibilities assigned to the director of revenue by sections 33.300 to
24 33.540, RSMo, relating to duties as a member of the board and matters relating
25 to bonds and bond coupons.

26 5. All the powers, duties and functions of the administrative services
27 section, section 33.580, RSMo, and others, are transferred by a type I transfer to
28 the office of administration and the administrative services section is abolished.

29 6. The commissioner of administration shall, in addition to his or her
30 other duties, cause to be prepared a comprehensive plan of the state's field
31 operations, buildings owned or rented and the communications systems of state
32 agencies. Such a plan shall place priority on improved availability of services
33 throughout the state, consolidation of space occupancy and economy in operations.

34 7. The commissioner of administration shall from time to time examine
35 the space needs of the agencies of state government and space available and
36 shall, with the approval of the board of public buildings, assign and reassign
37 space in property owned, leased or otherwise controlled by the state. Any other

38 law to the contrary notwithstanding, upon a determination by the commissioner
39 that all or part of any property is in excess of the needs of any state agency, the
40 commissioner may lease such property to a private or government entity. Any
41 revenue received from the lease of such property shall be deposited into the fund
42 or funds from which moneys for rent, operations or purchase have been
43 appropriated. The commissioner shall establish by rule the procedures for leasing
44 excess property.

45 8. [The commissioner of administration shall make the selection of a
46 personnel director from the names of the three highest ranking available eligibles
47 as provided in section 36.080, RSMo. The personnel advisory board, the
48 personnel division and the personnel director in the office of administration shall
49 retain the functions, duties and powers prescribed in chapter 36,
50 RSMo. Members of the personnel advisory board shall be nominated by the
51 commissioner of administration and appointed by the governor with the advice
52 and consent of the senate.

53 9.] The commissioner of administration is hereby authorized to coordinate
54 and control the acquisition and use of electronic data processing (EDP) and
55 automatic data processing (ADP) in the executive branch of state
56 government. For this purpose, the office of administration will have authority to:

57 (1) Develop and implement a long-range computer facilities plan for the
58 use of EDP and ADP in Missouri state government. Such plan may cover, but is
59 not limited to, operational standards, standards for the establishment, function
60 and management of service centers, coordination of the data processing education,
61 and planning standards for application development and implementation;

62 (2) Approve all additions and deletions of EDP and ADP hardware,
63 software, and support services, and service centers;

64 (3) Establish standards for the development of annual data processing
65 application plans for each of the service centers. These standards shall include
66 review of post-implementation audits. These annual plans shall be on file in the
67 office of administration and shall be the basis for equipment approval requests;

68 (4) Review of all state EDP and ADP applications to assure conformance
69 with the state information systems plan, and the information systems plans of
70 state agencies and service centers;

71 (5) Establish procurement procedures for EDP and ADP hardware,
72 software, and support service;

73 (6) Establish a charging system to be used by all service centers when

74 performing work for any agency;

75 (7) Establish procedures for the receipt of service center charges and
76 payments for operation of the service centers. The commissioner shall maintain
77 a complete inventory of all state-owned or -leased EDP and ADP equipment, and
78 annually submit a report to the general assembly which shall include starting
79 and ending EDP and ADP costs for the fiscal year previously ended, and the
80 reasons for major increases or variances between starting and ending costs. The
81 commissioner shall also adopt, after public hearing, rules and regulations
82 designed to protect the rights of privacy of the citizens of this state and the
83 confidentiality of information contained in computer tapes or other storage
84 devices to the maximum extent possible consistent with the efficient operation of
85 the office of administration and contracting state agencies.

86 [10.] 9. Except as provided in subsection [13] 12 of this section, the fee
87 title to all real property now owned or hereafter acquired by the state of Missouri,
88 or any department, division, commission, board or agency of state government,
89 other than real property owned or possessed by the state highways and
90 transportation commission, conservation commission, state department of natural
91 resources, and the University of Missouri, shall on May 2, 1974, vest in the
92 governor. The governor may not convey or otherwise transfer the title to such
93 real property, unless such conveyance or transfer is first authorized by an act of
94 the general assembly. The provisions of this subsection requiring authorization
95 of a conveyance or transfer by an act of the general assembly shall not, however,
96 apply to the granting or conveyance of an easement to any rural electric
97 cooperative as defined in chapter 394, RSMo, municipal corporation,
98 quasi-governmental corporation owning or operating a public utility, or a public
99 utility, except railroads, as defined in chapter 386, RSMo. The governor, with the
100 approval of the board of public buildings, may, upon the request of any state
101 department, agency, board or commission not otherwise being empowered to make
102 its own transfer or conveyance of any land belonging to the state of Missouri
103 which is under the control and custody of such department, agency, board or
104 commission, grant or convey without further legislative action, for such
105 consideration as may be agreed upon, easements across, over, upon or under any
106 such state land to any rural electric cooperative, as defined in chapter 394, RSMo,
107 municipal corporation, or quasi-governmental corporation owning or operating a
108 public utility, or a public utility, except "railroad", as defined in chapter 386,
109 RSMo. The easement shall be for the purpose of promoting the general health,

110 welfare and safety of the public and shall include the right of ingress or egress
111 for the purpose of constructing, maintaining or removing any pipeline, power line,
112 sewer or other similar public utility installation or any equipment or
113 appurtenances necessary to the operation thereof, except that "railroad" as
114 defined in chapter 386, RSMo, shall not be included in the provisions of this
115 subsection unless such conveyance or transfer is first authorized by an act of the
116 general assembly. The easement shall be for such consideration as may be agreed
117 upon by the parties and approved by the board of public buildings. The attorney
118 general shall approve the form of the instrument of conveyance. The
119 commissioner of administration shall prepare management plans for such
120 properties in the manner set out in subsection 7 of this section.

121 **[11.] 10.** The commissioner of administration shall administer a revolving
122 "Administrative Trust Fund" which shall be established by the state treasurer
123 which shall be funded annually by appropriation and which shall contain moneys
124 transferred or paid to the office of administration in return for goods and services
125 provided by the office of administration to any governmental entity or to the
126 public. The state treasurer shall be the custodian of the fund, and shall approve
127 disbursements from the fund for the purchase of goods or services at the request
128 of the commissioner of administration or the commissioner's designee. The
129 provisions of section 33.080, RSMo, notwithstanding, moneys in the fund shall not
130 lapse, unless and then only to the extent to which the unencumbered balance at
131 the close of any fiscal year exceeds one-twelfth of the total amount appropriated,
132 paid, or transferred to the fund during such fiscal year. The commissioner shall
133 prepare an annual report of all receipts and expenditures from the fund.

134 **[12.] 11.** All the powers, duties and functions of the department of
135 community affairs relating to statewide planning are transferred by type I
136 transfer to the office of administration.

137 **[13.] 12.** The titles which are vested in the governor by or pursuant to
138 this section to real property assigned to any of the educational institutions
139 referred to in section 174.020, RSMo, on June 15, 1983, are hereby transferred to
140 and vested in the board of regents of the respective educational institutions, and
141 the titles to real property and other interests therein hereafter acquired by or for
142 the use of any such educational institution, notwithstanding provisions of this
143 section, shall vest in the board of regents of the educational institution. The
144 board of regents may not convey or otherwise transfer the title to or other interest
145 in such real property unless the conveyance or transfer is first authorized by an

146 act of the general assembly, except as provided in section 174.042, RSMo, and
147 except that the board of regents may grant easements over, in and under such
148 real property without further legislative action.

149 [14.] 13. All county sports complex authorities, and any sports complex
150 authority located in a city not within a county, in existence on August 13, 1986,
151 and organized under the provisions of sections 64.920 to 64.950, RSMo, are
152 assigned to the office of administration, but such authorities shall not be subject
153 to the provisions of subdivision (4) of subsection 6 of section 1 of the Omnibus
154 State Reorganization Act of 1974, Appendix B, RSMo, as amended.

155 [15.] 14. All powers, duties, and functions vested in the administrative
156 hearing commission, sections 621.015 to 621.205, RSMo, and others, are
157 transferred to the office of administration by a type III transfer.

107.170. 1. As used in this section, the following terms mean:

2 (1) "Contractor", a person or business entity who provides construction
3 services under contract to a public entity. Contractor specifically does not include
4 professional engineers, architects or land surveyors licensed pursuant to chapter
5 327, RSMo, those who provide environmental assessment services or those who
6 design, create or otherwise provide works of art under a city's formally
7 established program for the acquisition and installation of works of art and other
8 aesthetic adornments to public buildings and property;

9 (2) "Public entity", any official, board, commission or agency of this state
10 or any county, city, town, township, school, road district or other political
11 subdivision of this state;

12 (3) "Public works", the erection, construction, alteration, repair or
13 improvement of any building, road, street, public utility or other public facility
14 owned by the public entity.

15 2. It is hereby made the duty of all public entities in this state, in making
16 contracts for public works[, the cost of which is] estimated to [exceed twenty-five]
17 **cost more than one hundred** thousand dollars, to be performed for the public
18 entity, to require every contractor for such work to furnish to the public entity,
19 a bond with good and sufficient sureties, in an amount fixed by the public entity,
20 and such bond, among other conditions, shall be conditioned for the payment of
21 any and all materials, incorporated, consumed or used in connection with the
22 construction of such work, and all insurance premiums, both for compensation,
23 and for all other kinds of insurance, said work, and for all labor performed in
24 such work whether by subcontractor or otherwise.

25 3. All bonds executed and furnished under the provisions of this section
26 shall be deemed to contain the requirements and conditions as herein set out,
27 regardless of whether the same be set forth in said bond, or of any terms or
28 provisions of said bond to the contrary notwithstanding.

29 4. Nothing in this section shall be construed to require a member of the
30 school board of any public school district of this state to independently confirm
31 the existence or solvency of any bonding company if a contractor represents to the
32 member that the bonding company is solvent and that the representations made
33 in the purported bond are true and correct. This subsection shall not relieve from
34 any liability any school board member who has any actual knowledge of the
35 insolvency of any bonding company, or any school board member who does not act
36 in good faith in complying with the provisions of subsection 2 of this section.

37 5. A public entity may defend, save harmless and indemnify any of its
38 officers and employees, whether elective or appointive, against any claim or
39 demand, whether groundless or otherwise arising out of an alleged act or
40 omission occurring in the performance of a duty under this section. The
41 provisions of this subsection do not apply in case of malfeasance in office or
42 willful or wanton neglect of duty.

 610.021. Except to the extent disclosure is otherwise required by law, a
2 public governmental body is authorized to close meetings, records and votes, to
3 the extent they relate to the following:

4 (1) Legal actions, causes of action or litigation involving a public
5 governmental body and any confidential or privileged communications between
6 a public governmental body or its representatives and its attorneys. However,
7 any minutes, vote or settlement agreement relating to legal actions, causes of
8 action or litigation involving a public governmental body or any agent or entity
9 representing its interests or acting on its behalf or with its authority, including
10 any insurance company acting on behalf of a public government body as its
11 insured, shall be made public upon final disposition of the matter voted upon or
12 upon the signing by the parties of the settlement agreement, unless, prior to final
13 disposition, the settlement agreement is ordered closed by a court after a written
14 finding that the adverse impact to a plaintiff or plaintiffs to the action clearly
15 outweighs the public policy considerations of section 610.011, however, the
16 amount of any moneys paid by, or on behalf of, the public governmental body
17 shall be disclosed; provided, however, in matters involving the exercise of the
18 power of eminent domain, the vote shall be announced or become public

19 immediately following the action on the motion to authorize institution of such
20 a legal action. Legal work product shall be considered a closed record;

21 (2) Leasing, purchase or sale of real estate by a public governmental body
22 where public knowledge of the transaction might adversely affect the legal
23 consideration therefor. However, any minutes, vote or public record approving
24 a contract relating to the leasing, purchase or sale of real estate by a public
25 governmental body shall be made public upon execution of the lease, purchase or
26 sale of the real estate;

27 (3) Hiring, firing, disciplining or promoting of particular employees by a
28 public governmental body when personal information about the employee is
29 discussed or recorded. However, any vote on a final decision, when taken by a
30 public governmental body, to hire, fire, promote or discipline an employee of a
31 public governmental body shall be made available with a record of how each
32 member voted to the public within seventy-two hours of the close of the meeting
33 where such action occurs; provided, however, that any employee so affected shall
34 be entitled to prompt notice of such decision during the seventy-two-hour period
35 before such decision is made available to the public. As used in this subdivision,
36 the term "personal information" means information relating to the performance
37 or merit of individual employees;

38 (4) The state militia or national guard or any part thereof;

39 (5) Nonjudicial mental or physical health proceedings involving
40 identifiable persons, including medical, psychiatric, psychological, or alcoholism
41 or drug dependency diagnosis or treatment;

42 (6) Scholastic probation, expulsion, or graduation of identifiable
43 individuals, including records of individual test or examination scores; however,
44 personally identifiable student records maintained by public educational
45 institutions shall be open for inspection by the parents, guardian or other
46 custodian of students under the age of eighteen years and by the parents,
47 guardian or other custodian and the student if the student is over the age of
48 eighteen years;

49 (7) Testing and examination materials, before the test or examination is
50 given or, if it is to be given again, before so given again;

51 (8) Welfare cases of identifiable individuals;

52 (9) Preparation, including any discussions or work product, on behalf of
53 a public governmental body or its representatives for negotiations with employee
54 groups;

55 (10) Software codes for electronic data processing and documentation
56 thereof;

57 (11) Specifications for competitive bidding, until either the specifications
58 are officially approved by the public governmental body or the specifications are
59 published for bid;

60 (12) Sealed bids [and related documents], until the bids are opened; **all**
61 **related documents, until the intent to award notice has been mailed;**
62 and sealed proposals and related documents or any documents related to a
63 negotiated contract until a contract is executed, or all proposals are rejected;

64 (13) Individually identifiable personnel records, performance ratings or
65 records pertaining to employees or applicants for employment, except that this
66 exemption shall not apply to the names, positions, salaries and lengths of service
67 of officers and employees of public agencies once they are employed as such, and
68 the names of private sources donating or contributing money to the salary of a
69 chancellor or president at all public colleges and universities in the state of
70 Missouri and the amount of money contributed by the source;

71 (14) Records which are protected from disclosure by law;

72 (15) Meetings and public records relating to scientific and technological
73 innovations in which the owner has a proprietary interest;

74 (16) Records relating to municipal hotlines established for the reporting
75 of abuse and wrongdoing;

76 (17) Confidential or privileged communications between a public
77 governmental body and its auditor, including all auditor work product; however,
78 all final audit reports issued by the auditor are to be considered open records
79 pursuant to this chapter;

80 (18) Operational guidelines and policies developed, adopted, or maintained
81 by any public agency responsible for law enforcement, public safety, first
82 response, or public health for use in responding to or preventing any critical
83 incident which is or appears to be terrorist in nature and which has the potential
84 to endanger individual or public safety or health. Nothing in this exception shall
85 be deemed to close information regarding expenditures, purchases, or contracts
86 made by an agency in implementing these guidelines or policies. When seeking
87 to close information pursuant to this exception, the agency shall affirmatively
88 state in writing that disclosure would impair its ability to protect the safety or
89 health of persons, and shall in the same writing state that the public interest in
90 nondisclosure outweighs the public interest in disclosure of the records. This

91 exception shall sunset on December 31, 2008;

92 (19) Existing or proposed security systems and structural plans of real
93 property owned or leased by a public governmental body, and information that is
94 voluntarily submitted by a nonpublic entity owning or operating an infrastructure
95 to any public governmental body for use by that body to devise plans for
96 protection of that infrastructure, the public disclosure of which would threaten
97 public safety:

98 (a) Records related to the procurement of or expenditures relating to
99 security systems purchased with public funds shall be open;

100 (b) When seeking to close information pursuant to this exception, the
101 public governmental body shall affirmatively state in writing that disclosure
102 would impair the public governmental body's ability to protect the security or
103 safety of persons or real property, and shall in the same writing state that the
104 public interest in nondisclosure outweighs the public interest in disclosure of the
105 records;

106 (c) Records that are voluntarily submitted by a nonpublic entity shall be
107 reviewed by the receiving agency within ninety days of submission to determine
108 if retention of the document is necessary in furtherance of a state security
109 interest. If retention is not necessary, the documents shall be returned to the
110 nonpublic governmental body or destroyed;

111 (d) This exception shall sunset on December 31, 2008;

112 (20) Records that identify the configuration of components or the
113 operation of a computer, computer system, computer network, or
114 telecommunications network, and would allow unauthorized access to or unlawful
115 disruption of a computer, computer system, computer network, or
116 telecommunications network of a public governmental body. This exception shall
117 not be used to limit or deny access to otherwise public records in a file, document,
118 data file or database containing public records. Records related to the
119 procurement of or expenditures relating to such computer, computer system,
120 computer network, or telecommunications network, including the amount of
121 moneys paid by, or on behalf of, a public governmental body for such computer,
122 computer system, computer network, or telecommunications network shall be
123 open; and

124 (21) Credit card numbers, personal identification numbers, digital
125 certificates, physical and virtual keys, access codes or authorization codes that
126 are used to protect the security of electronic transactions between a public

127 governmental body and a person or entity doing business with a public
128 governmental body. Nothing in this section shall be deemed to close the record
129 of a person or entity using a credit card held in the name of a public
130 governmental body or any record of a transaction made by a person using a credit
131 card or other method of payment for which reimbursement is made by a public
132 governmental body.

2 [8.120. There is hereby created within the office of
3 administration a "Division of Design and Construction", which shall
4 supervise the design, construction, renovations and repair of state
5 facilities, except as provided in sections 8.015 and 8.017, and
6 except in those belonging to the institutions of higher education
7 and the department of conservation. The division of design and
8 construction shall be responsible to review all requests for
appropriations for capital improvements.]

2 [8.803. The board of public buildings, in accordance with
3 section 8.400, or the state environmental improvement and energy
4 resources authority, in accordance with sections 260.005 to 260.125,
5 RSMo, may authorize the sale of bonds or participate in other
6 appropriate financing arrangements to fund energy efficiency
7 projects in state buildings. All energy efficiency projects for state
8 buildings proposed for funding by the environmental improvement
9 and energy resources authority pursuant to sections 8.800 to 8.825
10 and the anticipated amount of the bond issues or other financing
11 arrangement to fund such projects shall be specifically approved by
12 the joint committee on capital improvements oversight within
13 forty-five days of notification to the committee. If the committee
14 does not meet within forty-five days, the projects shall stand
approved.]

2 [8.815. The department and the division shall establish a
3 voluntary working group of persons and interest groups with
4 expertise in energy efficiency, including, but not limited to, such
5 persons as electrical engineers, mechanical engineers, builders,
6 architects, landscape architects, nonprofit organizations, and
7 persons with expertise in solar and renewable energy forms. The
8 voluntary working group shall advise the department on the
development of the energy efficiency standard and shall assist the

9 department in implementation of the standard by recommending,
10 reviewing and coordinating education programs for designers,
11 builders, businesses and other interested persons to facilitate
12 incorporation of the standard into existing practices.]

[8.817. The department shall analyze all state buildings for
2 energy efficiency as funds become available, using criteria
3 promulgated by the department by rule incorporating
4 state-of-the-art technology. The results of the analyses shall be
5 submitted by May fifteenth each year to the commissioner of
6 administration, the governor and the general assembly until all
7 state building analyses are completed. The results of the analysis
8 of each state building shall be submitted to the state agency which
9 owns or operates that state building as well.]

[8.823. The division shall recommend funding of energy
2 efficiency projects in state buildings. The division shall use energy
3 efficiency analyses provided by the department and review criteria
4 established by the division with the purpose of achieving the
5 maximum reduction in energy usage consistent with the
6 constraints of prudent cost justification.]

[8.830. For purposes of sections 8.830 to 8.851, the
2 following terms mean:

- 3 (1) "Department", the department of natural resources;
4 (2) "Director", the director of the department of natural
5 resources;
6 (3) "Division", the division of design and construction;
7 (4) "Public building", a building owned or operated by a
8 governmental subdivision of the state, including, but not limited to,
9 a city, county or school district;
10 (5) "State building", a building owned or operated by the
11 state, a state agency or department, a state college or a state
12 university.]

[8.833. The board of public buildings, in accordance with
2 section 8.400, or the state environmental improvement and energy
3 resources authority, in accordance with sections 260.005 to 260.125,
4 RSMo, may authorize the sale of bonds and the expenditure of the
5 proceeds from that sale for energy efficiency and energy retrofitting

6 projects in state buildings as recommended by the office of
7 administration. The office of administration shall determine the
8 scope, content and priority of each project. The office of
9 administration shall assign a priority to each project based on a
10 ranking of the payback period and energy cost reduction.]

[8.835. 1. The office of administration shall initiate the
2 highest priority project or projects on or before August 28, 1994,
3 and shall initiate projects with a simple energy savings payback
4 period of five years or less on or before August 28, 1998.

5 2. The office of administration shall advise the senate
6 appropriations committee and the house budget committee of the
7 anticipated reduction of utility and energy costs of all affected state
8 agencies for the payback period of each project and for two fiscal
9 years after completion of the payback period.]

[8.837. 1. By July 1, 1994, the department shall establish,
2 by rule, a minimum energy efficiency standard for new and
3 substantially renovated state buildings which shall be at least as
4 stringent as the American Society of Heating, Refrigerating and Air
5 Conditioning Engineers (ASHRAE) Standard 90.01-1989, as
6 revised, and shall be at least as stringent as any statewide energy
7 efficiency standard required pursuant to the Energy Policy Act of
8 1992 (Public Law 102-486).

9 2. All new or substantially renovated state buildings for
10 which design of such construction or renovation is initiated on or
11 after July 1, 1994, shall meet applicable provisions of the minimum
12 energy efficiency standard.]

[8.843. There is hereby established an interagency advisory
2 committee on energy cost reduction and savings. The committee
3 shall consist of the commissioner of administration, the director of
4 the division of design and construction, the director of the
5 department of natural resources, the director of the environmental
6 improvement and energy resources authority, the director of the
7 division of energy, the director of the department of transportation,
8 the director of the department of conservation and the
9 commissioner of higher education. The committee shall advise the
10 department on the development of the minimum energy efficiency

11 standard and state building energy efficiency rating system and
12 shall assist the office of administration in implementing sections
13 8.833 and 8.835.]

2 [8.847. The department shall make available energy
3 efficiency practices information to be used by individuals involved
4 in the design, construction, retrofitting and maintenance of public
5 and state buildings. The division shall immediately adopt and
6 implement those energy efficiency practices for the purchase and
7 replacement of electrical and mechanical equipment where the
simple energy savings payback period is five years or less.]

2 [8.849. The department shall authorize the use of available
3 federal petroleum violation escrow funds for the administration of
4 sections 8.830 to 8.851. Such funds may be used by the
5 department, or by the office of administration if authorized by the
department.]

2 [8.851. No provision of sections 8.830 to 8.851 or any rule
3 promulgated thereunder shall sacrifice the quality of indoor air in
the pursuit of increased energy efficiency.]

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